



IRW

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Shigeki HAYASHI et al.

Group Art Unit: 3616

Application No.: 10/542,633

Examiner: T. TO

Filed: July 29, 2005

Docket No.: 124763

For: OCCUPANT PROTECTION DEVICE

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the April 4, 2008 Election of Species Requirement, Applicants provisionally elect Species 1, Figures 1-3, with traverse. Claims 1-4, 12 and 13 read on the elected species.

In the Election of Species Requirement, Figure 16 was not included in any species. Because Fig. 16 was not identified with any species, then Fig. 16 is a part of the elected species.

Applicant respectfully submits that there exists *a priori* unity of invention with respect to all of the identified species. As stated in Chapter 10.03 of the ISPE (*International Search and Preliminary Examination Guidelines*):

Lack of unity of invention may be directly evident "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. For example, independent claims to A + X, A + Y, X + Y can be said to lack unity *a priori* as there is no subject matter common to all claims. In the case of independent claims to A + X and A + Y, unity of invention is present *a priori* as A is common to both claims. However, if it can be established that A is known, there is lack of unity *a posteriori*,

since A (be it a single feature or a group of features) is not a technical feature that defines a contribution over the prior art.

Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the species are known. See ISPE 10.07 and 10.08.

The Office Action does not establish that each and every element of the species is known in the prior art. Simply alleging that the structure details differ as noted in the office action does not establish that all of the features are known. Therefore, Applicant respectfully submits that lack of unity of invention has not been established, and thus an election of species requirement at this time is improper.

Thus, withdrawal of the Election of Species Requirement is respectfully requested.

Respectfully submitted,



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sdj

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